

CIVIL SERVICE COMMISSION MINUTES
NOVEMBER 5, 2008

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

W. Dale Bailey
Barry I. Newman
Francesca Krauel

Absent was:

A.Y. Casillas

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer
Karen F. Landers, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

APPROVED
CIVIL SERVICE COMMISSION

December 17, 2008

COUNTY OF SAN DIEGO
CIVIL SERVICE COMMISSION MINUTES
NOVEMBER 5, 2008

2:00 p.m. CLOSED SESSION: Discussion of Personnel Matters
and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San
Diego, California

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
8,9,10,11,		4,5,6,7	16,17

COMMENTS: Motion by Newman to approve all items not held for
discussion; seconded by Krauel. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.

A. Commissioner Newman: CONSIDERATION OF PUBLIC
EMPLOYMENT (GOV. CODE SEC. 54957, SUBD.(b)(1)) **Alma
Porley**, Mental Health Specialist, appealing a
Notification of Incompatible Activity from the Health
and Human Services Agency.

OPEN SESSION AGENDA
County Administration Center, Room 358

MINUTES

1. Approval of the Minutes of the regular meeting of October 1,
2008.

Approved.

CONFIRMATION OF ASSIGNMENT

2. Commissioner Casillas: Richard Pinckard, Esq., on behalf of **2008-09**, appealing an Order of Suspension and Charges from the Probation Department.

Confirmed.

3. Commissioner Bailey: Julie Buechler, Esq., on behalf of **2008-10**, Deputy Sheriff, appealing the Citizens' Law Enforcement Review Board's sustained finding of misconduct.

Confirmed.

DISCRIMINATION

Complaints

4. **Kathleen McGlown**, Office Assistant, alleging color and race discrimination by the Health and Human Services Agency.

RECOMMENDATION: Assign Commissioner Krauel as Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff Recommendation Approved.

5. **Ernesto Macareno-Carrasco**, Office Assistant, alleging sexual orientation discrimination by the Health and Human Services Agency.

RECOMMENDATION: Assign Commissioner Krauel as Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff Recommendation Approved.

6. **Heidi Kay**, Office Assistant, alleging disability and race discrimination as well as a hostile work environment by the Department of Parks and Recreation. (See Item No. 12 below.)

RECOMMENDATION: Assign Commissioner Newman as Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff Recommendation Approved.

7. **Martha Curatolo**, former Adult Protective Services Specialist, alleging retaliation discrimination by the Health and Human Services Agency.

RECOMMENDATION: Assign Commissioner Casillas as Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff Recommendation Approved.

Findings

8. Commissioner Krauel: **Bryon Yates**, Park Ranger, alleging race discrimination and sexual harassment by the Department of Parks and Recreation.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on July 2, 2008, the Commission appointed Francesca Krauel to investigate the complaint submitted by Bryon Yates, which alleged race discrimination and sexual harassment by the Department of Parks and Recreation. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation and has reported its findings to the Commission.

The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the Investigating Officer who concurs with OIA's report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred in that Mr. Yates did not establish that he had suffered an adverse employment action or that he had suffered under a hostile work environment. It is therefore recommended that Mr. Yates' Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Krauel to approve Findings and Recommendations;
seconded by Newman. Carried.**

**AYES: BAILEY, KRAUEL, NEWMAN
NOES: NONE
ABSENT: CASILLAS
ABSTENTIONS: NONE**

9. Commissioner Krauel: **Bryon Yates**, Park Ranger, alleging disability discrimination and favoritism by the Department of Parks and Recreation.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on August 6, 2008, the Commission appointed Francesca Krauel to investigate the complaint submitted by Bryon Yates, which alleged disability discrimination and favoritism by the Department of Parks and Recreation. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation and has reported its findings to the Commission.

The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the Investigating Officer who concurs with OIA's report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred in that Mr. Yates did not establish that he had suffered an adverse employment action or that he had suffered under a hostile work environment. It is therefore recommended that Mr. Yates' Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Krauel to approve Findings and Recommendations;
seconded by Newman. Carried.**

**AYES: BAILEY, KRAUEL, NEWMAN
NOES: NONE
ABSENT: CASILLAS
ABSTENTIONS: NONE**

10. Commissioner Bailey: **2008-07**, alleging gender discrimination by the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on August 6, 2008, the Commission appointed W. Dale Bailey to investigate the complaint submitted by 2008-07, which alleged gender discrimination by the Sheriff's Department. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation and has reported its findings to the Commission. The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that 2008-07's Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

Motion by Bailey to approve Findings and Recommendations; seconded by Krauel. Carried.

AYES:	BAILEY, KRAUEL, NEWMAN
NOES:	NONE
ABSENT:	CASILLAS
ABSTENTIONS:	NONE

INCOMPATIBLE ACTIVITY

Findings

11. Commissioner Newman: **Alma Porley**, Mental Health Specialist, appealing a Notification of Incompatible Activity from the Health and Human Services Agency.

FINDINGS & RECOMMENDATIONS:

The matter of the appeal of Alma Porley from a written Notification of Incompatible Activity (outside employment) with her class and position of Mental Health Specialist (Class No. 4836) in the Health and Human Services Agency was presented to the Civil Service Commission. The Commission

appointed Barry I. Newman, one of its members, to hear the appeal and submit findings, conclusions and recommendations to the Civil Service Commission. Thereafter, the matter was duly noticed and came on for hearing on October 10, 2008.

Alma Porley ("Employee") is a Mental Health Specialist in the County's Mental Health Services division of the Health & Human Services Agency ("Agency"). Her duties include assessment of the status and needs of homeless persons with mental health issues and referral of such persons to appropriate programs and shelters. Concurrently with Agency employment, Employee was also employed by the Community Research Foundation ("CRF") as a psycho-social rehabilitation counselor on an on-call basis during her non-Agency time. She subsequently disclosed such employment on a form required by the Agency. CRF is a private foundation which contracts with the County to provide certain mental health services including "crisis houses" for mentally ill persons. The Agency notified Employee that it had determined that her employment with CRF was incompatible with her employment with the Agency and ordered her to cease such employment. Employee appealed the determination.

At the Commission hearing, the Agency and Employee both presented testimony and evidence. The Agency established that Employee was in a position to refer Agency clients to CRF and that she was in a unit of the Agency that the CRF contracts with. These circumstances created a potential for abuse as well as a perception of impropriety. It is therefore recommended that the Agency's Notification of Incompatible Activity, and the Agency's order to cease such activity, which was contained therein, be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Newman to approve Findings and Recommendations;
seconded by Krauel. Carried.**

AYES:	BAILEY, KRAUEL, NEWMAN
NOES:	NONE
ABSENT:	CASILLAS
ABSTENTIONS:	NONE

INVESTIGATIONS

Request

12. **Heidi Kay**, Office Assistant, requesting a Rule XI investigation regarding the conduct and operations of the Department of Parks and Recreation. (See Item No. 6 above.)

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation.

Staff Recommendation Approved.

SELECTION PROCESS

Findings

13. **Ernesto Flores, Jr.**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet.

RECOMMENDATION: Ratify. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item No. 13 ratified.

OTHER MATTERS

Extension of Temporary Appointments

14. Department of Planning and Land Use

2 Code Enforcement Officers (Stephen Belda, Terence Torgergen)

RECOMMENDATION: Ratify.

During the reading of the Agenda, Commissioner Newman briefly spoke with a Department representative to clarify the need for this Extension.

Item No. 14 ratified.

15. Public Input.

INFORMATION

16. Kay Ryan, SEIU Local 221, on behalf of **Frederick Moten**, Mail Carrier, withdrawal of complaint alleging age and race discrimination by the Department of General Services.
(Commissioner Newman)

Withdrawn.

17. **Ray Scott**, Senior Cook, withdrawal of appeal an Order of Suspension and Charges from the Sheriff's Department.
(Commissioner Newman)

Withdrawn.

ADJOURNED: 2:55 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION: DECEMBER 3, 2008

ASSISTANCE FOR THE DISABLED:

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